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June 4, 2007

To: Supervisor Zev Yaroslavsky, Chairman
Supervisor Gloria Molina
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Supervisor Michael D. Antonovich
From: 
David E. Janssen
Chief Administrative Officer

**MOTION TO SUPPORT AB 904 (FEUER) – RECYCLING: FOOD CONTAINERS
(ITEM NO. 75-B, AGENDA OF JUNE 5, 2007)**

Item No. 75-B on the June 5, 2007 Supplemental Agenda is a motion by Supervisor Yaroslavsky to: 1) instruct the County's Legislative advocates in Sacramento to support AB 904 (Feuer); 2) send a five-signature letter to Assembly Member Feuer, Assembly Speaker, Senate President pro Tem, Assembly Appropriations Committee and the Los Angeles County Legislative Delegation expressing the Board's support of AB 904; and 3) instruct the Chief Administrative Officer to continue to pursue legislation which promotes market development and manufacturer stewardship of food packaging products.

As amended on June 1, 2007, AB 904 would enact the Plastic and Marine Debris Reduction, Recycling, and Composting Act, which would: 1) prohibit, starting July 1, 2010, a fast food restaurant or other take-out food provider from distributing single use food service packaging to a consumer unless the packaging is either compostable or recyclable and is accepted back by the food provider for recycling or composting; 2) prohibit, starting July 1, 2012, a take-out food provider from distributing single use food service packaging to a consumer, unless the packaging is also recovered for composting or recycling at a rate of 25 percent or more statewide, or at a similar rate in the city or the unincorporated area of the county where the food provider distributes the packaging; and 3) require, starting July 1, 2010, a take-out food provider that has a minimum customer

seating capacity of 20 and provides trash receptacles for customers, to provide appropriate receptacles for the collection of any compostable packaging or recyclable packaging.

AB 904 also would: 1) require that, starting July 1, 2009, a person who produces single-use food service packaging and distributes this packaging in the State to maintain and provide, upon request to any person, a list of the single-use food service packaging distributed by that person that is recyclable or compostable; 2) provide for a civil penalty of not more than \$100 per day on a person violating these requirements, not to exceed \$10,000; 3) require the California Integrated Waste Management Board (CIWMB) to publish annually a list setting forth any penalties that have been levied against a violator of this act; and 4) require the CIWMB to deposit all penalties paid pursuant to the act into the Marine Debris Reduction Account, and authorize the CIWMB to use these funds for public education and to assist local governmental agencies in efforts to reduce plastic waste and marine debris, and for their costs of implementing the act.

AB 904 defines "take out food provider" as any establishment that provides prepared food for human consumption on or off premises. It does not include grocery stores or other stores in which the primary business is not the sale of prepared foods and that sells unprepared food. It includes, but is not limited to, a fast food restaurant, and any establishment that has a drive-up window. "Prepared food" is defined as any ready-to-consume food or beverage prepared on the food provider's premises. It does not include any raw uncooked meat, fish, or eggs unless the food is for consumption without further food preparation.

The Department of Public Works (DPW) indicates that littering is a significant problem in many communities throughout Los Angeles County. It poses a danger to public health and safety, decreases property values, pollutes local waterways, creates a nesting area for rodents and other vermin, and lowers the quality of life. In order to reduce littered items from entering the County's storm drain system, DPW annually spends millions of dollars on flood control channel/catch basin/roadside cleanups, capital improvements, street sweeping, storm water pollution prevention activities, best management practices, and public education and outreach programs. In addition, thousands of residents annually volunteer countless hours in beach, roadside, park, and neighborhood cleanups.

DPW indicates that take out food containers are designed for immediate disposal, typically made of plastics such as Expanded Polystyrene (EPS). Often such materials are non-recyclable when contaminated with food. In addition, take out food containers are one of the most common littered items because they are lightweight and easily blown out of overflowing trash receptacles. Since litter ends up in our storm drain system and eventually on our beaches, studies have shown that over half of all floating marine debris collected at our local beaches are EPS products. EPS does not biodegrade and can last hundreds of years once disposed. However, upon entering the marine environment, EPS breaks apart into smaller pieces, which negatively impacts water quality and harms marine wildlife, which often mistake the EPS pieces for food.

Because AB 904 would enhance the market for environmentally friendly alternatives to products that are neither recyclable or compostable, and also provide an incentive for the use of durable and reusable goods over single use packaging, which would reduce the occurrence of litter in Los Angeles County, DPW recommends that the County support AB 904.

The Department of Public Health (DPH) advises that while it supports the goal of AB 904 to reduce solid waste from plastics including Expanded Polystyrene from storm drains, beaches, and marine environments, the bill will create operational obstacles for food facilities which will require some changes in operations and physical plant to avoid creating conditions that may adversely affect public health.

These obstacles include: 1) restaurants typically collect solid waste within their premises and store the material in exterior dumpsters or bins. However, in the absence of exterior storage, solid waste must be stored inside the premises. This bill would require additional space to store recyclable material. Waste storage in this fashion tends to promote the presence of vermin and, with limited available storage space, increases the risk of cross contamination of food products; and (2) restaurants in malls or strip centers typically share garbage facilities in common that may not be under their immediate control or of adequate size to accommodate additional waste receptacles. The tracking of recyclable material for each operator would require additional containers.

DPH indicates that it will work closely with affected businesses on implementation if the bill becomes law.

Opponents of AB 904 are concerned about the take-back provision that requires establishments to either compost or recycle single use food service packaging if the customer brings it back. This may create space shortages and may be a logistical and public health challenge to smaller businesses that lack the necessary facilities to accept and store these used items.

Support for AB 904 is consistent with existing County policy to support legislation to promote or provide incentives for the development of alternatives to landfills and incineration and existing policy to support measures which promote the preservation and restoration of Los Angeles County mountain, bay, watershed, river and wetland areas. In addition, support for AB 904 is consistent with the Board Action of May 22, 2007 to support AB 820 (Karnette), which would place restrictions on State facilities' use of EPS food containers.

AB 904 is supported by several organizations, including: Californians Against Waste, California League of Conservation Voters, Defenders of Wildlife, Planning and Conservation League, Santa Monica Baykeeper, and Sierra Club California. It is opposed by: the American Chemistry Council, California Chamber of Commerce, California Grocers Association, California Hotel and Lodging Association, California Manufacturers and

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Technology Association, California Retailers Association, Chevron Phillips Chemical Company, Dart Container Corporation, Dolco Packaging, and the Grocery Manufacturers Association/Food Products Association. AB 904 passed off of the Assembly Appropriations Committee's suspense file on May 31, 2007, as amended, and will be on the Assembly Floor next.

DEJ:GK:MAL
EW:acn

c: Executive Officer, Board of Supervisors
County Counsel
Public Health Department
Public Works Department